

## **POLICY ON ELIGIBILITY FOR THE MEN'S AND WOMEN'S COMPETITION CATEGORIES**

### **A. INTRODUCTION**

FINA is the international federation recognised by the International Olympic Committee (**IOC**) for administering international competitions in Aquatics. Its primary mission is to promote and encourage the advancement of Aquatics in all possible aspects, throughout the world. It does this through the promotion of Aquatics health, education, and development, and the staging of FINA competitions, including the FINA World Championships, World Cups, Grand Prix, World Leagues, and World Series events and tournaments. FINA is responsible for promulgating appropriate rules and regulations for the disciplines of Swimming, Open Water Swimming, Diving, Water Polo, Artistic Swimming, and High Diving, as well as for Masters programme/activity.

As part of its mission, FINA is responsible for developing and administering eligibility criteria for its sport and competitions. In this respect, FINA is committed to providing safe, fair, inclusive, and non-discriminatory opportunities for all Aquatics athletes wishing to compete in FINA competitions.

Historically, Aquatics sport has been separated into men's and women's competition categories. The separation reflects the sport's commitment to: (1) ensuring equal opportunity for both male and female athletes to participate and succeed in the sport, including through the equal representation in its programs and competitions of athletes of both biological sexes; (2) ensuring competitive fairness and physical safety within its competition categories; and (3) developing the sport and promoting its popular appeal and commercial value. Because of the performance gap that emerges at puberty between biological males as a group and biological females as a group, separate sex competition is necessary for the attainment of these objectives. Without eligibility standards based on biological sex or sex-linked traits, we are very unlikely to see biological females in finals, on podiums, or in championship positions; and in sports and events involving collisions and projectiles, biological female athletes would be at greater risk of injury.

### **B. BACKGROUND TO THE POLICY**

In November 2021, the IOC issued its Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations (**IOC Framework**), which encouraged all international federations to develop eligibility criteria for the women's competition category that reflect the specificities of their particular sports but that include to the maximum extent possible athletes who, without regard to their sex or sex-linked traits, identify as women.

Specifically, the IOC Framework rejects the presumption that the male sex confers an athletic advantage, and discourages continued reliance on a testosterone proxy as the exclusive basis for eligibility for the women's category. Where evidence-based concerns about safety or fairness mean it is not possible to include male-to-female transgender athletes (transgender women) and athletes with 46 XY differences of sex development (**46 XY DSD**) and a female legal gender and/or gender identity in the women's competition category, it encourages consideration of alternative opportunities within the sport, such as open events.

In January 2022, the International Federation of Sports Medicine and the European Federation of Sports Medicine Associations issued a joint position statement (**Joint Position Statement**) responding to what those organisations considered to be failures of the IOC process and recommendations. According to the Joint Position Statement, the IOC's focus on only one aspect of the human rights analysis meant that it failed to take proper account of "the scientific, biological or medical aspects," in particular that "high testosterone concentrations, either endogenous or exogenous, confer a baseline advantage for athletes in certain sports" such that "it is clear to uphold the integrity and fairness of sport that these baseline advantages of testosterone must be recognized and mitigated."

In response to the IOC Framework and the Joint Position Statement, FINA convened a working group to consider the best available statistical, scientific, and medical evidence concerning sex differences in sports performance, and any associated male sex-based advantage. Its charge was to use this evidence to establish eligibility criteria to regulate the participation of transgender and 46 XY DSD athletes in the men's and women's categories in Aquatic sports that are consistent with FINA's mission and core commitments. The working group included (a) an athlete group (**Athlete Group**), (b) a science and medicine group (**Science Group**), and (c) a legal and human rights group (**Legal and Human Rights Group**).

The Athlete Group was comprised of current and retired Aquatics athletes and coaches (including transgender athletes and coaches), who brought to account their views and the views of their broader communities. The view of the majority of the Athlete Group was that competitive fairness must remain the primary objective in the establishment of competition categories. Moreover, it was highlighted that by reason of their sex and sex-linked traits, females often enjoy fewer societal opportunities compared to males, including fewer sporting opportunities, and sex-separated competitions are necessary to help address this inequality. In the majority view, FINA should remain committed to the separation of athletes in sport into men's and women's categories based on biological sex and should allow male-to-female transgender athletes (transgender women) and athletes with 46 XY DSD with a female gender identity to compete in the women's category pursuant to eligibility criteria that are consistent with, and do not undermine, that commitment.

The Science Group was comprised of independent experts in the fields of physiology, endocrinology, and human performance, including specialists in sex differences in human performance and in transgender medicine. The task of the Science Group was to examine the most up-to-date scientific knowledge on (1) the impact of biological sex on athletic

performance, and (2) the impact of gender-affirming medical transition on factors that influence athletic performance, and to produce a report setting out their findings.

The Science Group reported that biological sex is a key determinant of athletic performance, with males outperforming females in sports (including Aquatics sports) that are primarily determined by neuromuscular, cardiovascular, and respiratory function, and anthropometrics including body and limb size. The extent of the male/female performance gap varies by sport and competition, but the gap universally emerges starting from the onset of puberty. The group reported that there are sex-linked biological differences in Aquatics, especially among elite athletes, that are largely the result of the substantially higher levels of testosterone to which males are exposed from puberty onwards. Prior to puberty, testosterone levels are similar in females and males. During puberty, however, testes-derived testosterone concentrations increase 20-fold in males, while testosterone concentrations remain low in females so that post-pubescent males have circulating testosterone concentrations at least 15 times higher than post-pubescent females (15-20 nmol/L in adult males versus c.1 nmol/L in typical females of any age). High testosterone levels generate not only anatomical divergence in the reproductive system but also measurably different body types/compositions between sexes.

According to the Science Group, if gender-affirming male-to-female transition consistent with the medical standard of care is initiated after the onset of puberty, it will blunt some, but not all, of the effects of testosterone on body structure, muscle function, and other determinants of performance, but there will be persistent legacy effects that will give male-to-female transgender athletes (transgender women) a relative performance advantage over biological females. A biological female athlete cannot overcome that advantage through training or nutrition. Nor can they take additional testosterone to obtain the same advantage, because testosterone is a prohibited substance under the World Anti-Doping Code.

The Legal and Human Rights Group was comprised of legal experts in sex discrimination, human rights, and international sports law, including the jurisprudence of the Court of Arbitration for Sport (**CAS**). This group accepted the lawfulness of FINA's mission, authority and responsibility, and FINA's core commitment to equality of opportunity for both male and female athletes, all as summarised above. It was informed of the views of the Athlete Group and the scientific evidence produced by, and conclusions of, the Science Group. Thus, its task was to reflect FINA's commitment to a sex-based women's category as necessary to ensure that FINA does not discriminate against—and is able to empower—female athletes, and that Aquatics is able to promote male and female athletes and male and female sport equally. It is also understood that, as with any form of affirmative action, FINA's effort not to discriminate against female athletes and thus to ensure a sex-based women's category itself has exclusionary effects. In this instance, those effects are on male-to-female transgender athletes (transgender women) and athletes with 46 XY DSD whose gender identity is female. The Legal Group has tailored FINA's eligibility rule narrowly, so that (a) it is neither under- nor over-inclusive, and (b) it includes provisions throughout that are designed to ensure that the requirements and restrictions for transgender women and 46 XY DSD athletes with a female gender identity to compete in the

women's competition category are limited to what is necessary and proportionate to achieve FINA's overarching objectives.

### C. THE POLICY

Taking into account all of the matters outlined above, FINA issues this policy (the **Policy**) establishing the criteria for eligibility (a) to compete in the men's category or in the women's category in the FINA World Championships, World Cups, Grand Prix, World Leagues, and World Series events and tournaments, and other international competitions events (**FINA competitions**), and (b) to set FINA World Records in the men's category or in the women's category in FINA competitions and in other events recognised by FINA, wherever they are held.

### D. POLICY DEFINITIONS

FINA recognises that some individuals and groups may be uncomfortable with the use of medical and scientific terminology related to sex and sex-linked traits. FINA respects all Aquatics athletes and has sought to avoid sensitive terminology that may cause offense. Nevertheless, some use of sensitive terminology is needed to be precise about the sex characteristics that justify separate competition categories and to ensure that the Policy's terms are understood by all Aquatics stakeholders. Some of those terms are explained in this section.

For purposes of this Policy:

"Differences of sexual development" (**DSD**) are a group of conditions where external genital appearance is discordant with internal sex organs (testes and ovaries). This Policy is only concerned with 46 XY DSD, i.e., DSD affecting athletes with testes (males as defined below).

The word "female" means possession of XX chromosomes and (in the absence of medical intervention) ovaries and increased circulating oestrogen and progesterone starting at puberty.

The word "male" means possession of XY chromosomes and (in the absence of medical intervention) testes and increased circulating testosterone starting at puberty.

The word "sex" denotes natural biological differences between females and males, including chromosomes, sex organs, and endogenous hormonal profiles. This Policy uses the word "sex" and the term "biological sex" interchangeably.

The term "Tanner Stages" denotes the five stages of puberty during which individuals develop secondary sex characteristics. Tanner Stage 2 denotes the onset of puberty. The normal time of onset of puberty ranges from 8 to 13 years old in females, and from 9 to 14 years old in males.

The term "transgender" refers to individuals whose gender identity and/or expression differs from what is typically associated with their sex.



## **E. THE POLICY OBJECTIVES**

FINA is committed to the inclusion of all Aquatics athletes from all countries in the sport, subject to the eligibility requirements set out in this Policy

It is committed to the separation of Aquatics sports into men's and women's categories according to sex, as this is necessary for the attainment of the goals for that category that are set out in the Introduction to this Policy. It is also committed to providing the opportunity for transgender and 46 XY DSD athletes to compete in Aquatics competitions pursuant to eligibility criteria that are consistent with and do not undermine those goals.

In light of these commitments, the objectives of this Policy are:

- to maintain the separation of Aquatic sports into men's and women's categories according to scientifically-grounded, sex-based criteria;
- to provide opportunities for transgender and 46 XY DSD athletes to compete in FINA competitions in the competition category that reflects their gender identity based on eligibility criteria that are consistent with and do not undermine FINA's goals for the women's category; and
- to provide a clear, fair, respectful, and confidential process by which athletes may establish their eligibility for FINA competitions.

## **F. THE ELIGIBILITY REQUIREMENTS FOR COMPETITION AND FOR SETTING FINA RECORDS IN THE MEN'S AND WOMEN'S CATEGORIES**

### **1. Eligibility**

- a. Subject to the requirements set forth below, all Aquatics athletes are eligible to compete in the men's category or in the women's category in FINA competitions and to set FINA World Records in FINA competitions and other events recognised by FINA, whatever their legal gender, gender identity, or gender expression. No athlete is excluded from a FINA competition or from setting FINA World Records based on their legal gender, gender identity, or gender expression.
- b. All issues relating to the eligibility of an athlete under this Policy to compete in a particular sex category will be determined by FINA following consultation, as necessary, with one or more independent scientific and medical experts appointed by the FINA Executive. It is an important part of this Policy that the experts can assess whether a given athlete meets the eligibility criteria set out below. To that end, FINA may ask the athlete to

provide further information and documents and/or to submit to one or more medical examinations. All costs associated with this assessment will be borne by FINA.

## 2. Certification

- a. All athletes must certify their chromosomal sex with their Member Federation in order to be eligible for FINA competitions. Failure to do so, or provision of a false certification, will render the athlete ineligible.
- b. Member Federations must confirm their athletes' certifications of chromosomal sex when registering their athletes to compete in FINA competitions.
- c. FINA reserves the right to include a chromosomal sex screen in its anti-doping protocol to confirm such certification.

## 3. Eligibility for the Men's Category

- a. All male athletes, including athletes with 46 XY DSD, are eligible to compete in FINA competitions and to set FINA World Records in the men's category, regardless of their legal gender, gender identity, or gender expression.
- b. Female-to-male transgender athletes (transgender men) are eligible to compete in FINA competitions and to set FINA World Records in the men's category, except that:
  - i. For the disciplines of Water Polo and High Diving, the athlete must provide to FINA an assumption of risk form (in the form set out in Appendix One to this Policy) signed and dated by the athlete or, if the athlete is a minor, by their legal proxy.

*[Comment to Section F.3.b.i: It is strongly recommended that the athlete speaks with a qualified medical specialist prior to competition to ensure their physical ability to participate in the event in the men's category and to ensure that they understand the attendant risks.]*

- ii. All athletes who are undergoing treatment involving testosterone or other anabolic substances as part of female-to-male gender-affirming hormone treatment are required to obtain a Therapeutic Use Exemption (**TUE**) for that treatment in accordance with the FINA Doping Control Rules (**FINA DCR**).

#### 4. Eligibility for the Women's Category

- a. All female athletes are eligible to compete in FINA competitions and set FINA World Records in the women's category, regardless of their legal gender, gender identity, or gender expression, under the following conditions:
  - i. Athletes who have previously used testosterone as part of female-to-male gender-affirming hormone treatment (with or without a TUE) but are no longer following that treatment are eligible to compete in the women's category in FINA competitions and to set FINA World Records in the women's category in FINA competitions and in other events recognised by FINA if they can establish to FINA's comfortable satisfaction that (a) the testosterone use was for less than a year in total (i.e., from the date of first use to the date of last use) and did not take place during pubertal growth and development, and (b) their testosterone levels in serum (or plasma) are back to pre-treatment normal and any associated anabolic effects have been eliminated.
  - ii. Female athletes who have used testosterone in violation of the World Anti-Doping Code or FINA DCR (or any other applicable anti-doping rules) may return to competition after they have served their period of ineligibility.
- b. Male-to-female transgender athletes (transgender women) and athletes with 46 XY DSD whose legal gender and/or gender identity is female are eligible to compete in the women's category in FINA competitions and to set FINA World Records in the women's category in FINA competitions and in other events recognised by FINA if they can establish to FINA's comfortable satisfaction that they have not experienced any part of male puberty beyond Tanner Stage 2 or before age 12, whichever is later. Specifically, the athlete must produce evidence establishing that:
  - i. They have complete androgen insensitivity and therefore could not experience male puberty; or
  - ii. They are androgen sensitive but had male puberty suppressed beginning at Tanner Stage 2 or before age 12, whichever is later, and they have since continuously maintained their testosterone levels in serum (or plasma) below 2.5 nmol/L.

- iii. An unintentional deviation from the below 2.5 nmol/L requirement may result in retrospective disqualification of results and/or a prospective period of ineligibility.
- iv. An intentional deviation from the below 2.5 nmol/L requirement may result in retrospective disqualification of results and a prospective period of ineligibility equal or commensurate in length to periods imposed under the FINA DRC for intentional anti-doping rule violations involving anabolic steroids.

*[Comment to Section F.4.b: For purposes of the Policy, all measurements of serum testosterone must be conducted by means of liquid chromatography coupled with mass spectrometry.]*

## 5. Process for Application

The process for applications for eligibility is set forth in the Operational Requirements (see Appendix Two to this Policy).

## **G. COMPETITIVE OPPORTUNITIES WITHIN AND OUTSIDE OF THE MEN'S AND WOMEN'S CATEGORIES**

1. Classifying athletes on the basis of sex is necessary to meet FINA's goals for female Aquatics athletes and the women's competition category. FINA's eligibility standards for the women's category are narrowly tailored so that they can achieve those goals without unnecessarily limiting participation by gender-diverse athletes.
2. Male-to-female transgender athletes (transgender women) and athletes who have a 46 XY DSD and a female legal gender and/or gender identity are eligible to compete in the women's category in FINA competitions and to set FINA World Records in the women's category at FINA competitions and other events recognised by FINA if they meet the applicable eligibility conditions.
3. Female-to-male transgender athletes (transgender men) are eligible to compete in the men's category at FINA competitions and to set FINA World Records in the women's category at FINA competitions and in other events recognized by FINA if they meet the applicable eligibility conditions.
4. Otherwise, everyone who qualifies according to the applicable eligibility conditions has a place in FINA's competition categories based on their sex.
5. Within those categories, gender diversity is welcome. For example, female-to-male transgender athletes (transgender men) who are not using exogenous androgens remain eligible for, and are welcome to compete in, the women's category; and male-to-

female transgender athletes (transgender women) remain eligible for, and are welcome to compete in, the men's category whether or not they are suppressing their endogenous androgens.

6. Athletes who do not meet the applicable criteria for the men's category or the women's category may compete in any open events that FINA may develop in the future. FINA will begin work following the final promulgation of this Policy to determine the feasibility of establishing an open category in Aquatics sport disciplines, in which an athlete who meets the eligibility criteria for that event would be able to compete without regard to their sex, their legal gender, or their gender identity.
7. Athletes may also seek to qualify for and compete in events that are organised and sanctioned by bodies other than FINA. FINA does not seek to limit the development by others of opportunities to participate in different competitions.
8. FINA recommends that each Member Federation adopts its own sex and gender policy to determine eligibility to compete in events taking place under its jurisdiction. FINA recommends that Member Federations use that policy to create a safe environment for their athletes, transgender or otherwise, that respects the inclusion of all Aquatics athletes.
9. Member Federations may use this Policy as a guideline for national-level and age-group competition, to be tailored based on any relevant requirements within their jurisdiction. For the avoidance of doubt, however, any policy applied at a national level will not determine the eligibility of athletes to compete in FINA competitions or to set FINA World Records. Instead, that will be determined exclusively by reference to this Policy. In addition, any policy adopted and enforced by a Member Federation remains within the jurisdiction of the Member Federation. It follows that any decision taken by a Member Federation concerning the applicability of its policy, or this Policy, is not considered a FINA decision.
10. FINA recommends that organisers of recreational (non-competitive or non-elite) Aquatics events consider their local circumstances and goals in their determination of whether or not separate sex competition is also necessary for them.

#### **H. CONTINUED INVOLVEMENT**

While all athletes have a place in Aquatic sports, FINA acknowledges that the application of this Policy means that certain individuals may not be able to compete in the category that best aligns with their legal gender, gender identity, or gender expression. Individuals who exercise the choice not to compete because of these eligibility standards are encouraged to consider coaching, officiating, administration, and/or other ways to stay involved with Aquatics.

For more information on how to become involved, please contact FINA or your Member Federation.

## **I. APPLICATION**

This Policy will come into effect on 20 June 2022. It governs eligibility to compete in FINA competitions and to set FINA World Records at FINA competitions and other events recognised by FINA, taking place from that date forward.

FINA is committed to reviewing this Policy periodically to take account of all relevant scientific and medical developments. It may be amended from time to time by FINA based on such developments.

## **J. ASSISTANCE WITH THIS POLICY**

FINA is committed to the inclusion of all Aquatics athletes in accordance with the eligibility requirements set out in this Policy. Any individual seeking information on the application of this Policy should contact FINA for assistance at [eligibility@fina.org](mailto:eligibility@fina.org).

## **Appendix One**

### **ASSUMPTION OF RISK FORM**

I, ..... [print name], wish to compete in the men's competition category in Water Polo and/or High Diving in accordance with FINA's Policy on Eligibility for the Men's and Women's Competition Categories.

I have read and understood and agree to comply with the Policy and the Operational Requirements appended to the Policy.

I acknowledge and accept the possible increased injury risk associated with transgender men competing in the men's competition category in Water Polo alongside males who are statistically likely to be stronger, faster, and heavier than transgender men.

AND/OR

I acknowledge and accept the possible increased injury risk associated with transgender men competing in the men's competition category in the High Diving given the demands of the discipline.



I acknowledge and agree that it is my sole personal responsibility to determine whether I have the physical abilities to safely participate in the men's competition category in Water Polo and/or High Diving.

I understand and acknowledge that FINA strongly recommends that I speak to a qualified medical specialist prior to competition to ensure my physical ability to participate in the men's category and to ensure that I understand the attendant risks.

I acknowledge and agree that I am voluntarily assuming the risk that I might suffer loss, injury, death, or other damage as a result of my participation in the men's competition category, including (without limitation) any possible increased risk due to my status as a female-to-male transgender athlete. I hereby waive and release FINA and all persons and entities involved in any way in FINA Competitions (including, without limitation, all of their respective members, directors, officers, employees, volunteers, contractors, and agents) from any claim of liability in respect of such loss, injury, death, or other damage.

Athlete name: .....

Athlete National Federation: .....

Athlete signature: .....

Date: .....

If the athlete is under the age of eighteen, this form must be signed on the athlete's behalf by the athlete's legal proxy.

Proxy name: .....

Proxy signature: .....

Proxy relationship to athlete: .....

Date: .....

Please complete this form and return it to *eligibility@fina.org*.

## **Appendix Two**

### **OPERATIONAL REQUIREMENTS IN RELATION TO FINA'S POLICY ON ELIGIBILITY FOR THE MEN'S AND WOMEN'S COMPETITION CATEGORIES**

*(Effective as from 20 June 2022)*

In the case of confidential queries concerning the Policy or these Operational Requirements, or for the establishment of eligibility thereunder, please contact: [eligibility@fina.org](mailto:eligibility@fina.org)

## A. INTRODUCTION

1. These Operational Requirements implement the Policy on Eligibility for the Men's and Women's Competition Categories that the FINA Bureau adopted on 18 June 2022 and that the FINA Congress ratified on 19 June 2022 (the **Policy**). They will come into effect on 20 June 2022, and from that date forward they will bind all Member Federations, athletes, and other natural and legal persons who are subject to FINA's jurisdiction, and will govern eligibility: (a) to compete in the FINA World Championships, World Cups, Grand Prix, World Leagues, and World Series events and tournaments, and other international events (**FINA Competitions**), and (b) to set FINA World Records in FINA Competitions and/or in other events recognised by FINA, wherever they are held.
2. The Policy and these Operational Requirements are intended to operate uniformly around the world, regulating the conditions to compete in FINA Competitions, and to set FINA World Records in FINA Competitions and other events recognised by FINA, wherever they are held. The Policy and these Operational Requirements are, therefore, to be interpreted and applied not by reference to national or local laws, but rather as an independent and autonomous text, and in a manner that protects and advances the objectives identified in the Policy.
3. Defined words and phrases used in these Operational Requirements have the meaning given to them in the FINA Constitution, or in the Policy, or in these Operational Requirements.

## B. ELIGIBILITY CONDITIONS AND APPLICATION

1. The eligibility conditions for competing in the men's and women's categories in FINA competitions and for setting FINA World Records in the men's and women's categories in FINA Competitions and in other events recognised by FINA are set out in the Policy (the **Eligibility Conditions**).
2. Any athlete (including any transgender or 46 XY DSD athlete) who wishes to be eligible to participate in a FINA Competition, or to set a FINA World Record in a FINA Competition or in another event recognised by FINA, agrees, as a condition to such eligibility, and subject always to the confidentiality provisions set out in Section G:
  - a. To fully comply with the Policy and these Operational Requirements;
  - b. To cooperate promptly and in good faith with FINA and one or more independent scientific and medical experts appointed by the FINA Executive (**Independent Expert**) in the discharge of their responsibilities under the Policy and these Operational Requirements, including to provide them with all of the information and evidence (including physical examinations) they request to enable them to assess compliance and/or

monitor continuing compliance with the eligibility conditions set out in the Policy and these Operational Requirements;

- c. To the fullest extent permitted and required under data protection and other laws of Switzerland and any other applicable jurisdictions) to the collection, processing, disclosure, and use of information (including their sensitive personal information) as required to implement and apply the Policy and these Operational Requirements effectively and efficiently; and
  - d. To follow the procedures set out in Section F to challenge the Policy and/or these Operational Requirements and/or to appeal decisions made under the Policy and/or these Operational Requirements, and not to bring any proceedings in any court or other forum that are inconsistent with that agreement.
- 3. An athlete may revoke at any time, with or without giving reasons, the consent that they have granted under Section B.2, in which case they will be deemed to have withdrawn any claim to satisfy the eligibility conditions set out in the Policy and these Operational Requirements.
- 4. Prior to competition, each Member Federation must register its athletes with the FINA General Management System (GMS). At registration, each Member Federation will be required to identify each athlete's chromosomal sex in accordance with Policy Section F.2 and either confirm compliance with the Policy and these Operational Requirements or identify that the matter requires further consideration under the Policy and these Operational Requirements. It remains the obligation of the National Federation to maintain an accurate record of their athletes' chromosomal sex and understanding of the application of the Policy and these Operational Requirements.
- 5. The performance in an event recognised by FINA of an athlete who has not been registered with FINA (i.e. a non-FINA event) in accordance with the foregoing requirements may be recognised as a FINA World Record if the athlete and/or their Member Federation satisfies FINA that the athlete met all of the relevant Eligibility Conditions of the Policy at the time of the event.
- 6. If, pursuant to Sections, B.4, B.9, C.4 or C.5, or otherwise in FINA's discretion, a case arises that requires further consideration under the Policy and these Operational Requirements, that matter will be dealt with in accordance with the Policy and these Operational Requirements.
- 7. Every Member Federation and every athlete and other natural or legal person who is subject to FINA's jurisdiction:

- a. must cooperate promptly and in good faith with an Independent Expert in the discharge of their respective responsibilities under the Policy and these Operational Requirements; and
  - b. when providing information pursuant to the Policy and these Operational Requirements, must provide accurate and complete information, and must not provide any information in bad faith or for an improper purpose.
- 8. For the avoidance of doubt, FINA notes the following:
  - a. Neither legal recognition of an athlete's gender identity as the athlete's legal sex nor surgical anatomical changes are required in order for a transgender or 46 XY DSD athlete to be eligible to compete at a FINA Competition or to set a FINA World Record in the competition category that is consistent with their gender identity.
  - b. No athlete is required to undergo any medical assessment and/or treatment under the Policy or these Operational Requirements. It is the athlete's responsibility, in consultation with their medical team, to decide on the advisability of proceeding with any assessment and/or treatment.
  - c. The Eligibility Conditions operate without prejudice to the other eligibility requirements that are applicable to all athletes under the FINA Rules, which must also be satisfied at all relevant times. In particular, nothing in the Policy or these Operational Requirements is intended to undermine or affect in any way any of the requirements of the World Anti-Doping Code, of the WADA International Standards (including the International Standard for Therapeutic Use Exemptions), or of the FINA Doping Control Rules. Nothing in the Policy or these Operational Requirements permits, excuses, or justifies non-compliance with any of those requirements, including any requirement for an athlete to obtain a TUE for the use of substances on the WADA Prohibited List, such as testosterone, spironolactone, or GnRH agonists (see further the WADA Transgender Athletes TUE Physician Guidelines, available at [www.wada-ama.org](http://www.wada-ama.org)).
- 9. Any Masters athlete must register directly with FINA prior to participation in the event in question. At registration, each athlete will certify their chromosomal sex in accordance with Policy Section F.2 and either confirm compliance with the Policy and these Operational Requirements or identify that the matter requires further consideration under the Policy and these Operational Requirements.



**C. ASSESSMENT BY INDEPENDENT SCIENTIFIC AND/OR MEDICAL EXPERT(S)**

1. A female-to-male transgender athlete (transgender man), or a male-to-female transgender athlete (transgender woman), or an athlete with a 46 XY DSD whose legal gender and/or gender identity is female, who wishes to establish their eligibility under the Policy (including, without limitation, resulting from an investigation conducted further to Section D.2) must file the following with the FINA Executive:
  - a. A comprehensive medical history and such other evidence as is required to demonstrate their satisfaction of the Eligibility Conditions. The athlete (and their Member Federation, where applicable) is responsible for ensuring that the information provided is accurate and complete, and that nothing relevant is withheld.
  - b. The consents and waivers necessary to allow the FINA Executive to provide the athlete's submission under Section C.1.a to an Independent Expert who will conduct the eligibility assessment detailed herein.
2. Upon the athlete's request for an eligibility determination under Section C.1.a, or pursuant to an investigation under Section D.2, an Independent Expert shall review the submission and make a determination of eligibility under the Policy.
3. The Independent Expert shall have the medical and/or scientific credentials and expertise necessary and relevant for the assessments at issue. In selecting an Independent Expert, the FINA Executive may, but need not, draw from experts in the athlete's region.
4. The Independent Expert will assess cases referred to them by the FINA Executive to determine whether the Eligibility Conditions have been met. The Independent Expert may make such enquiries or undertake such investigations or examinations as they consider necessary to carry out the required assessment effectively, including requesting further information from the athlete and/or the athlete's physician, and/or conducting an independent physical examination of the athlete, and/or obtaining opinions from other relevant experts.
5. In making an assessment, an Independent Expert will take into account all relevant and reliable evidence that goes to establishing whether or not the Eligibility Conditions are satisfied, including (without limitation):
  - a. evidence as to whether or not an athlete wishing to compete in the women's category has complete androgen insensitivity;
  - b. evidence as to whether or not an athlete wishing to compete in the women's category suppressed male puberty beginning at Tanner Stage Two or before age 12;

- c. evidence as to whether or not an athlete wishing to compete in the women's category continuously maintained their testosterone levels in serum (or plasma) below 2.5 nmol/L beginning at Tanner Stage Two or before age 12;
  - d. evidence as to whether or not an athlete wishing to compete in the men's category obtained a TUE authorizing the use of exogenous androgens in accordance with Policy Section 3.b.ii; and
  - e. evidence as to whether or not an athlete wishing to return to competition in the women's category satisfies the conditions set out in Policy Section 4.a.i.
- 6. If an Independent Expert has any concerns about the adequacy of the evidence provided by the athlete on any particular point, they must give the athlete a fair opportunity to try to address those concerns before they come to their final decision.
- 7. The Independent Expert will complete their assessment as soon as is reasonably practicable given the circumstances of the case. However, there is no obligation to complete the assessment by any particular date, and in no circumstance will FINA or the Independent Expert be liable for any detriment allegedly suffered by the athlete or anyone else as a result of the length of time taken to complete the assessment.
- 8. Once they have completed their assessment, the Independent Expert will send their decision in writing to the FINA Executive and the athlete.

- a. If the Independent Expert decides that the Eligibility Conditions have not been met, they must explain in writing the reasons for that decision. Where applicable, they should also specify what else the athlete may do in order to satisfy the Eligibility Conditions.
  - b. If an Independent Expert decides that the Eligibility Conditions have been met, they must explain in writing the reasons for that decision. The athlete will immediately be eligible to compete in the relevant competition category (men's or women's, as applicable) in FINA Competitions and to set FINA World Records in that competition category in FINA Competitions and other events recognised by FINA. That eligibility will be subject in every case to the athlete's continuing satisfaction of the Eligibility Conditions, including (where applicable) continuously maintaining their testosterone in serum (or plasma) at a concentration of less than 2.5 nmol/L. The Independent Expert may specify particular means of demonstrating such continuing compliance. In any event, the athlete must produce, on request, evidence satisfactory to an Independent Expert of such continuing compliance.
9. The Independent Expert's decision will be final and binding on all parties. It may only be challenged by way of appeal in accordance with Section F.2.C.

**D. COMPLIANCE**

1. FINA may monitor an athlete's ongoing compliance with the Eligibility Conditions by any appropriate means, including (where relevant) random or targeted testing of the athlete's testosterone level in serum (or plasma) or further assessment by an Independent Expert. The athlete agrees to provide whereabouts information and blood samples for this purpose on request, and also agrees that any samples or whereabouts information that they provide for anti-doping purposes and/or any anti-doping data relating to them may also be used for this purpose.
2. In addition to the general power to monitor continuing compliance with the Eligibility Conditions, FINA may investigate, at any time:
  - a. whether an athlete who has not filed a declaration under these Operational Requirements is a transgender athlete or 46 XY DSD athlete who needs to establish their eligibility to compete in a particular competition category in accordance with the Policy and these Operational Requirements; and/or
  - b. any circumstances that indicate actual or potential non-compliance with the Policy and/or these Operational Requirements.

In such cases, if they wish to retain their eligibility to compete in FINA Competitions and to set FINA records in FINA Competitions and in other events recognised by FINA, the athlete in question and their Member Federation (and all other relevant persons who come under FINA's jurisdiction) must cooperate fully and in good faith with that investigation. Where necessary to safeguard the fairness and/or integrity of competition and/or the safety of the competitors, the FINA Executive may provisionally suspend the athlete from competing in FINA Competitions and from setting FINA World Records in FINA Competitions or in other events recognised by FINA pending resolution of the matter, provided that in such cases all reasonable endeavours will be used to complete the investigation as expeditiously as possible. Any such provisional suspension may be appealed in accordance with Section F.2.a.

3. Any investigation under Section D.2 must be initiated in good faith and on reasonable grounds based on information derived from reliable sources, such as (without limitation) information from the affected athlete or their Member Federation, results from a routine pre-participation health examination, or data as to testosterone levels and/or other data obtained from analysis of samples collected for anti-doping purposes.
4. Without prejudice to Section D.5, if it is determined that a male-to-female transgender athlete (transgender woman) or a 46 XY DSD athlete competed in the women's competition category at a FINA Competition while having testosterone levels in serum (or plasma) of 2.5 nmol/L or more, the results obtained by the athlete/team at that event will be disqualified, with all resulting consequences, including forfeiture of any medals, ranking points, prize money, or other rewards awarded to the athlete based on those results.
5. An unintentional deviation from the 2.5 nmol/L requirement may result in retrospective disqualification of results and/or a prospective period of ineligibility.
6. Without prejudice to Section D.7, if it is determined that a male-to-female transgender athlete (transgender woman) or a 46 XY DSD athlete competed in the women's category at an event recognised by FINA while having testosterone levels in serum (or plasma) of 2.5 nmol/L or more, the results obtained by the athlete/team at that event will not be recognised for purposes of determining FINA records.
7. An intentional deviation from the 2.5 nmol/L requirement may result in retrospective disqualification of results and a prospective period of ineligibility equal or commensurate in length to periods imposed under the FINA Doping Control Rules for intentional anti-doping rule violations involving anabolic agents.
8. Since athletes specifically agree to comply with the Policy and these Operational Requirements for eligibility purposes (and transgender women undergoing testosterone-suppression treatment will typically maintain serum testosterone levels

below 2.5 nmol/L), the burden is on the athlete to establish, to FINA's reasonable satisfaction, that any deviation above 2.5nmol/L was unintentional.

#### **E. DISCIPLINARY PROCEEDINGS AND SANCTIONS**

1. Where:

- a. information that is provided pursuant to the Policy and/or these Operational Requirements is inaccurate or misleadingly incomplete;
- b. an athlete competes in a FINA Competition in a category of competition for which they have not satisfied the Eligibility Conditions;
- c. an athlete who has previously been determined to have satisfied the Eligibility Conditions fails to cooperate fully and in good faith with efforts to determine their continuing compliance with the Eligibility Conditions;
- d. there has been any other breach of or non-compliance by an athlete with the Policy and/or these Operational Requirements; or
- e. a coach, trainer, agent, or other person or entity has been complicit in an athlete's breach of or non-compliance with the Policy and/or these Operational Rules;

FINA may take disciplinary action against the person(s) involved in accordance with FINA Rule C 23.

2. In such disciplinary proceedings, the person(s) charged may not challenge the validity of the Policy or these Operational Requirements, or of any decision made under the Policy or these Operational Requirements. Instead, such challenge may only be brought by way of challenge or appeal in accordance with Section F.
3. In such disciplinary proceedings, the sanctions to be imposed, depending on all of the circumstances of the case, may include (without limitation):
- a. a caution, reprimand and/or warning as to future conduct;
  - b. the disqualification of individual and/or team results obtained in FINA Competitions, with all resulting consequences, including forfeiture of any medals, ranking points, prize money, or other rewards awarded to the athlete based on those results;
  - c. the non-recognition as a FINA record of individual and/or team results obtained at an event recognised by FINA;

- d. a specified period of ineligibility to participate in FINA Competitions and to set FINA records in other events recognised by FINA;
- e. a fine; and/or
- f. if the breach involves more than two members of a representative team of a Member Federation, or if there are multiple breaches involving such a team, appropriate sanctions on the team and/or the Member Federation (e.g., disqualification of team results; imposition of a period of future ineligibility to participate in FINA Competitions; a fine).

**F. DISPUTE RESOLUTION**

1. The validity of the Policy and/or these Operational Requirements may only be challenged by way of ordinary proceedings filed before the Court of Arbitration for Sport in Lausanne, Switzerland (**CAS**) or as part of an appeal to the CAS made pursuant to Section F.2.
2. The following decisions (and only the following decisions) made under the Policy and these Operational Requirements may be appealed to the CAS:
  - a. a decision to suspend an athlete provisionally from competition pursuant to Section D.2 may be appealed by the athlete, in which case FINA will be the respondent to the appeal;
  - b. a decision that the athlete may not compete in FINA Competitions or set FINA records in the competition category that is consistent with their gender identity may be appealed by the athlete, in which case FINA will be the respondent to the appeal; and
  - c. a decision by an Independent Expert that the athlete may compete in FINA Competitions in the competition category that is consistent with their gender identity may be appealed by FINA, in which case the athlete will be the respondent to the appeal.
3. Any such challenge or appeal will be conducted in the English language and will be governed by the FINA Constitution and other FINA Rules (in particular, the Policy and these Operational Requirements), with the laws of Switzerland applying subsidiarily. In the case of any conflict between any of the above instruments and the CAS Code of Sports-Related Arbitration in force at the relevant time, the above-instruments will take precedence.
4. The CAS will hear and determine the challenge/appeal in accordance with the CAS Code of Sports-Related Arbitration. Pending that determination, the matter under challenge and/or the decision under appeal (as applicable) will remain in full force and effect unless the CAS orders otherwise.



5. The decision of the CAS will be final and binding on all parties, and no right of appeal or other challenge will lie from that decision on any ground, except as set out in Chapter 12 of the Swiss Federal Code on Private International Law.

#### **G. CONFIDENTIALITY**

1. All cases arising under the Policy and these Operational Requirements, and in particular all athlete information provided to FINA under the Policy and these Operational Requirements, and all results of examinations and assessments conducted under the Policy and these Operational Requirements, will be dealt with in strict confidence at all times. All medical information and data relating to an athlete will be treated as sensitive personal information and the Independent Expert will ensure at all times that it is processed as such in accordance with applicable data protection and privacy laws. The information covered by this paragraph will not be used for any purpose not contemplated in the Policy and these Operational Requirements, and will not be disclosed to any third party save as is strictly necessary for the effective application and enforcement of the Policy and these Operational Requirements, or otherwise as is required by law.
2. FINA will not comment publicly on the specific facts of a pending case (as opposed to general descriptions of the process and science involved) except in response to public comments attributed to the athlete involved or their representatives.
3. Each Independent Expert will be required to sign an appropriate conflict of interest declaration and confidentiality undertaking in relation to their work carried out pursuant to the Policy and these Operational Requirements.

#### **H. COSTS**

1. Athletes are responsible for the costs associated with their initial application for eligibility under the Policy and Operational Requirements, including for obtaining and transmitting their medical files to FINA, and (where applicable) for continuing to satisfy the Eligibility Conditions. FINA is responsible for the costs associated with any required medical assessments and monitoring under the Policy and Operational Requirements.
2. FINA and an athlete whose case arises for investigation and/or assessment under the Policy and these Operational Requirements may agree on the appointment of an independent Ombudsman to assist the athlete in understanding and addressing the Policy and these Operational Requirements. FINA is responsible for the costs of the Ombudsman, if any.

#### **I. MISCELLANEOUS**

1. In no circumstances will FINA, the Independent Expert, or any of FINA's employees, officers, agents, representatives, or other persons involved in the administration of the

Policy and these Operational Requirements be liable in any way for any acts done (or omitted to be done) in good faith in connection with the administration of the Policy and these Operational Requirements.

2. In the event an issue arises that is not foreseen in the Policy or these Operational Requirements, it will be addressed by FINA in a manner that protects and promotes the objectives identified in the Policy.